

Exh. E

UNITED STATES DISTRICT COURT
District of South Dakota
225 South Pierre Street, Room 413
Pierre, South Dakota 57501

ROBERTO A. LANGE
United States District Judge

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John Kilgallon
Chief of Staff to Director of United States Marshal Service
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Dear Mr. Kilgallon,

I write on behalf of the judges of the District of South Dakota regarding an issue this Court has with the COVID-19 vaccination status of Deputy U.S. Marshals in this District. On April 15, U.S. Marshal for the District of South Dakota Daniel C. Mosteller copied me on a letter that, among other things, stated "at this time, USMS employees will not be providing their respective vaccination status to the Court." A copy of the letter and the underlying Memorandum dated March 25 from Judge Charles B. Kornmann are attached for reference.

I have a very good working relationship with U.S. Marshal Mosteller and his chief deputy; we have worked together over the past year about how most safely to administer justice and conduct court operations during the pandemic. I understand that the April 15 letter contains what U.S. Marshal Mosteller understands as the national policy of the U.S. Marshals Service. I further understand that, at least in the District of South Dakota, the U.S. Marshal does not know which Deputy U.S. Marshals are and are not vaccinated, but believes that 30% declined to be vaccinated against COVID-19, despite having an early opportunity as law enforcement to get vaccinated.

Guidance from the Administrative Office of U.S. Courts makes clear: "Inquiring whether an employee has been vaccinated for COVID-19 is not a prohibited disability-related inquiry." There is nothing in the Health Insurance Portability and Accountability Act preventing us from learning vaccination status of employees. Indeed, we need to know precisely who among our employees remain unvaccinated to mitigate their risk of contracting the virus and to control the risk they pose to others in the courthouse, including members of the public and other federal employees.

I expect that we all can agree on the following: 1) the COVID-19 vaccine is safe and effective; 2) people who are vaccinated are far less likely to become infected with COVID-19 and become less ill if infected than those who are unvaccinated; 3) the vaccine is readily available to all Deputy U.S. Marshals and court employees; 4) the safest courtroom is one where everyone is

fully vaccinated; 5) a report of a COVID-19 positive from someone who works in the courtroom at a minimum disrupts scheduling and working through the backlog of criminal hearings and cases; 6) we in management have a dual responsibility of safety of employees as well as performing our jobs to serve the interests of justice; 7) knowing the vaccination status of an employee is important to formulating and taking precautions, as well as knowing who is at greatest risk to contract and spread the virus; 8) getting people vaccinated is critical in achieving so-called herd immunity and ending this pandemic; and 9) the District Court and U.S. Marshals Service have a shared interest in assuring the safety of the courtroom and courthouse.

With these interests in mind, this Court likely will debar from chambers and courtrooms all its employees who refuse to be vaccinated. The district judges in South Dakota also want to avoid having unvaccinated Deputy U.S. Marshals in the courtrooms. I realize that policies concerning COVID-19 change as we learn more, so I wanted to see if the policy of the U.S. Marshals Service remains as U.S. Marshal Mosteller put it. I would like to know whether it is the policy of the U.S. Marshals Service not to know what Deputy U.S. Marshals are unvaccinated. I also would like to know if the U.S. Marshals Service intends to have unvaccinated deputies work inside courtrooms where judges require all to be vaccinated. I have to believe other districts are raising similar concerns. I look forward to finding common ground to achieve what I believe to be a shared goal.

Best Regards,



Roberto A. Lange
Chief Judge

cc: Daniel C. Mosteller, U.S. Marshal
Stephen Houghtaling, Deputy U.S. Marshal
Judge Karen E. Schreier
Judge Jeffrey L. Viken
Judge Lawrence L. Piersol
Judge Charles B. Kormann
Matthew Thelen, Clerk of Court
Dennis Holmes, Acting U.S. Attorney
Jason Tupman, Federal Public Defender